

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG12/16
27 April 1990

Special Distribution

Group of Negotiations on Goods (GATT)
Negotiating Group on Trade-Related
Investment Measures

MEETING OF 29-30 MARCH 1990

Note by the Secretariat

1. The Group held its sixteenth meeting on 29-30 March 1990 under the chairmanship of Ambassador T. Kobayashi (Japan). The agenda set out in GATT/AIR/2954 was adopted.

I Item A of the Agenda

2. The Chairman recalled his suggestion that at this meeting participants should focus on how development aspects should be integrated into the negotiations and how adequately GATT Articles ensured that the adverse trade effects of TRIMs were avoided. He drew attention to and invited comments on a new communication presented jointly by Argentina, Brazil, Cameroon, Colombia, Cuba, Egypt, India, Nigeria, People's Republic of China, United Republic of Tanzania, and Yugoslavia (MTN.GNG/NG12/W/25).

3. The representatives of Bangladesh, Sri Lanka and Zimbabwe said that their countries wished to be added to the list of countries co-sponsoring W/25. The representative of Bangladesh added that as had been indicated in the earlier communication from his delegation (NG12/W/21), to balance their disadvantages the least-developed countries wished to have the right to use whatever policies were necessary to support their development and industrialization and to attract direct foreign investment. The representative of Sri Lanka added that in the early stages of development investment played a crucial rôle. Sri Lanka had recently initiated an active programme of investment promotion to attract foreign investment.

4. The representative of Brazil said that W/25 aimed to contribute to achieving the most useful results from the negotiations, given the Group's terms of reference. It addressed the two issues which the Chairman had asked participants to focus on at this meeting. W/25 should be seen from two perspectives. First, the perspective of optimism: as indicated in its conclusions, sponsoring countries were endeavouring to work towards a successful outcome on TRIMs which should facilitate the movement of investment across international frontiers. Secondly the perspective of alarm: the negotiating process had so far extended beyond the limits set in the mandates agreed by Ministers in Punta del Este and in Montreal. Countries sponsoring W/25 wished it to be understood clearly that they could not participate in an attempt to modify the Group's mandate, nor in attempts to attribute inherently adverse trade effects to investment

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UR-90-0238

measures with a view to establishing conditions for strictly disciplining the measures themselves, as has been proposed in some recent submissions.

5. The representative of Nigeria said that W/25 attempted to establish that the Group had for a long time deviated from its work of identifying the trade restrictive and distorting effects of investment measures and finding means to avoid those effects. W/25 also attempted to bring into focus development aspects that needed to be integrated into the negotiations. It rejected the categorization of investment measures and the arbitrary notion of prohibition. The TRIMs negotiations were being carried on within GATT provisions and GATT principles should therefore apply. Those principles did not include the notion of prohibition; they provided remedies where certain measures caused nullification or impairment of GATT benefits. W/25 demonstrated that investment measures were used by developing countries in particular to promote social and economic development and to achieve national policy objectives that were not trade-related, and to counter the restrictive business practices of multinational corporations. It was the belief of countries sponsoring W/25 that the Group should return to the proper subject of the negotiations.

6. The representative of China said that China's investment measures had been trade promoting, and he provided data in this regard. It could not be presumed that investment measures were inherently trade restrictive and distorting. If an investment measure was alleged to have adverse trade effects under specific circumstances, such effects had to be demonstrated. As stated in Section III of W/25, investment measures were important policy instruments, especially in developing countries, for the attainment of social and economic policy objectives that were consistent with the provisions of the GATT. The long list of approaches of governments to promoting social and economic growth and development was a convincing manifestation of the legitimacy of the employment of investment measures which to a large extent were conducive to realizing the objectives of the GATT. In the view of his government, the right of countries to employ investment measures should not be challenged. China favoured a case-by-case approach to dealing with demonstrated adverse trade effects of investment measures; proposals to prohibit the use of investment measures themselves were inappropriate and unacceptable.

7. The representative of India said that W/25 was being presented jointly on behalf of countries that represented about 45 per cent of world population; other supporting countries brought that total to more than 50 per cent of world population. Investment was for the benefit and economic well-being of these people. If W/25 was looked at from that perspective, it was clear what the Group ought to address. W/25 contained views and concerns that had already been put forward in the Group by individual participants; they had not so far received any response from developed country participants. He hoped they would now be considered, particularly in terms of how they could be addressed in the negotiations if not through the means suggested in W/25.

8. The representative of Tanzania said that preceding speakers had rightly addressed, inter alia, the need for the Group to adhere to the

Punta del Este mandate and take into account the development concerns of developing countries. Given the need to continue to promote Tanzania's development and increase its participation in international trade, his authorities were not in a position to make any blanket commitments on the use of investment measures per se. Deliberate intervention through investment measures was undertaken in the context and framework of Tanzania's national priorities, including the creation of employment, safeguarding the terms of trade, research and development, and so forth. W/25 addressed these concerns, and an assurance was needed from developed country participants that they would be taken care of.

9. The representative of Egypt said that the main points made in W/25 were: the Group's mandate was to deal with the adverse trade effects of investment measures and not the measures themselves; those effects should be direct and significant and should be dealt with on a case-by-case basis; foreign direct investment played a very important rôle in promoting the economic development of developing countries, and investment measures and requirements were applied by governments not only to channel and harmonize investments with national objectives but also to achieve the social and economic objectives which were listed in W/25. The submission of W/25 demonstrated the goodwill of developing countries to achieve results and reach concrete agreements in the Group; he believed that the goodwill of developed country participants should also be demonstrated.

10. The representative of Yugoslavia said that the Group had not progressed much over the past year. The main reason, in his view, was the difference between participants in terms of their basic approaches, and particularly the concept of prohibition. The Group had to concentrate on searching for solutions within the existing framework of GATT rules and disciplines, as well as rights and obligations.

11. The representative of Singapore expressed appreciation for W/25 which covered comprehensively and cogently the development aspects of investment measures. His delegation shared fully the view that only when a causal link between an investment measure and its direct and significant adverse trade effects could be demonstrated should the Group proceed to explore appropriate means to deal with them.

12. The representative of Peru said his delegation fully shared the views expressed in W/25. He emphasized several of the points made in the submission, particularly as regards the Group's mandate, the need to focus on the adverse trade effects of investment measures and not the measures themselves, the need to take development considerations fully into account, and the conclusions reached. The results of the negotiations had to be well-balanced and reflect the interests of all participants.

13. The representative of Morocco said his delegation fully shared the arguments put forward in W/25, and especially the treatment of development considerations for which the Ministerial Mid-Term decision reserved a central place. His delegation shared the conclusions and recommendations of W/25. W/25 was still under study in his capital, and he hoped to receive soon a decision that Morocco would also sponsor it formally.

14. The representative of Malaysia said that W/25 was a positive and constructive contribution which reflected the readiness of developing countries to discuss and address the issue of the adverse trade effects of TRIMs. Malaysia supported many elements of the paper, in particular that investment measures including incentives represented important policy instruments for developing countries in achieving their economic, social and development aims. Those aims were consistent with the relevant provisions of the GATT. Economic prospects for Malaysia would be significantly different if it had been deprived of the liberty to adopt flexible investment policies and measures aimed particularly at orderly, progressive and diversified development of industries and the maximum utilization of resources. The development dimension of TRIMs was important to developing countries, and his delegation felt it was important to the international trade community as a whole, especially those who were committed to free and fair trade and to the dynamics of the market place. An important feature of the use of TRIMs was that developing countries' economies had to be integrated increasingly into the world economy; this feature should be given more emphasis by the Group since it would help developing countries to allow gradually the greater interplay of market forces in their economies. In any event, they should be able to choose their policy mix, including the adoption of appropriate investment measures. It was unfortunate that the various proposals put before the Group calling for disciplines on investment measures did not take into consideration the development aspects of TRIMs. Much of the argument advanced for disciplining TRIMs was based on conjecture. His delegation was not convinced that such arguments necessarily justified the categorization of TRIMs as being trade restricting and distortive. It therefore agreed with conclusions of W/25, and sincerely hoped they would help to put into perspective the Group's mandate and to further its work.

15. The representative of Pakistan said his delegation was at one with the approach and thrust of W/25. It had been concerned with the way that negotiations have been driven in the Group. It did not believe that many of the investment measures cited such as local equity requirements, exchange and remittance restrictions, technology transfer and licensing requirements had any relationship with or impact on trade. More importantly, characterizing these investment instruments as measures in a pejorative sense cut at the very root of the employment by individual governments of economic policies for the attainment of social and national objectives. There could be no a priori presumption that investment measures were inherently trade restrictive and distorting, and the concept of prohibiting investment instruments was wholly unrealistic. His delegation agreed fully with the approach suggested in W/25 that the direct and significant adverse trade effects of any investment measure ought to have to be demonstrated if they were to fall within the scope of the Group's work, and that a case-by-case approach was called for.

16. The representative of Jamaica strongly supported W/25, and in particular the views contained in its Introduction, the view that TRIMs were not inherently trade restrictive and distorting, and the view that development aspects should be fully integrated into the negotiations. Developing countries had to adopt measures necessary for industrial growth

and in favour of social and economic development. The Group was not mandated to negotiate a new foreign investment code; it was to deal only with those aspects of investment measures that directly and obviously affected trade.

17. The representative of Chile welcomed the initiative that had been taken in submitting W/25. He said that his delegation shared many of the views it contained, particularly that the Group's mandate was to analyse and avoid the adverse trade effects of investment measures and not the measures themselves, and that those trade effects should be direct, significant and negative to fall within the scope of the negotiations given that investment measures were such an important development tool. The negotiations had to respect the existing framework of rights and obligations in the GATT.

18. The representative of Mexico welcomed the submission of W/25 which took a logical approach that was consistent with the Group's mandate. She agreed that the Group's starting point should be the adverse trade effects of investment measures and not the measures themselves. Those effects had to be demonstrated to exist before the Group could go on to analyse the provisions of the GATT, and only after that stage should the elaboration of additional provisions be considered. Investment measures could not be claimed a priori to cause adverse trade effects. Her delegation felt that the heterogeneous nature of the proposals made in the Group, the different contexts in which investment measures were applied and the different results that the same investment measure might have in different circumstances, indicated that case-by-case examination would be appropriate to determine the adverse trade effects of the measures. A case-by-case approach was not new to the GATT, for example in the context of dumping and subsidies; even in the case of prohibited subsidies, injury and causation had to be demonstrated before countermeasures could be taken. In the context of a new area such as TRIMs, a case-by-case approach was even more necessary. Her delegation agreed with the conclusions reached in W/25.

19. The representative of the Philippines welcomed the submission of W/25. It provided a coherent presentation of the special rôle investment policies played in the development process. She recalled the agreement reached in Montreal that development concerns were a principal and overriding consideration that should be integrated into the negotiating process, and said that W/25 provided the Group with a deeper understanding of that task. What was left was the equally daunting task of providing empirical evidence of the adverse trade effects of investment measures, if there were any, so that those effects could be avoided. At the culmination of the Uruguay Round, this Group would be able to measure its success in terms of the progress made in these two areas. Investment policies were used by developed and developing countries alike as a matter of sovereign economic policy. W/25 clearly illustrated the purposes served by investment measures. The Philippines welcomed and encouraged foreign investment, but considered that prudential management of investment flows was critical to ensure that they yielded positive contributions to the country's sustained economic recovery and long term equitable growth and development. Investment flows were a critical complement to privatization efforts

through the rational withdrawal of government from business, promoting greater efficiency in the allocation of scarce resources, promoting exports and reducing the foreign debt problem through debt for bond swaps and debt to equity conversion schemes. If any modalities were needed at all to avoid the adverse trade effects of TRIMs, they should be grounded on the concept of shared ideas. It could not be presumed that investment measures taken to promote development objectives constituted trade distorting measures, nor that prudential regulations or investment policies resulted in the so-called artificial alteration of the competitive position of enterprises engaged in international trade. The presentation of empirical evidence and establishment of causality were the only acceptable means of determining the existence of trade distortions. Presumed guilt in the absence of positive evidence and causality gravely prejudiced the right of governments to employ investment measures to serve development objectives.

20. The representative of Korea said that his delegation fully shared the view that development aspects should be treated as an important element of the Group's work. The Group should avoid hampering the development efforts of developing countries in formulating the outcome to negotiations.

21. The representative of Thailand welcomed the submission of W/25 as an important and substantive contribution that he hoped would help move the negotiations forward in a balanced way. It reflected the serious concerns of developing countries in general, including Thailand. His delegation shared many of the points of analysis and the conclusions of W/25, although it still had reservations on some of the specific arguments, especially from the perspective of policy objectives and practicality in Thailand.

22. The representative of Indonesia said that W/25 contained many views that were shared by his delegation. Its approach was logical and consistent with the Group's mandate, and development aspects were very important to many developing countries. These aspects had to be integrated into the negotiations. His delegation therefore agreed with the conclusions and recommendations contained in W/25.

23. The representative of the United States welcomed the submission of W/25. He was encouraged in particular by the conclusion it contained that the negotiated outcome should facilitate a movement of investments across international frontiers, and he said that he could accept also that this should be especially with a view to serving developmental aspirations of developing countries. His delegation shared the view that the objective should be to promote investment flows and have that promote development. He welcomed the inclusion in Section IV of W/25 of the concept of working on disciplines. He said that the term "direct and significant" in relation to the trade effects of investment measures was not contained in the Group's mandate. His delegation did not wish to address insignificant trade effects, but the GATT had two approaches to adverse trade effects. One, as pointed out W/25, was based on the anti-dumping model; the other was based on the concept of prohibition, as was contained for example in Article III:5. GATT practice confirmed the approach that certain measures were inherently contradictory to the GATT and must not be adopted, and he referred in this regard to the findings in paragraph 5.1.9 of the Superfund

Panel (BISD 34S 158) on Article III:2, first sentence. The Group needed to work with both of these approaches.

24. Section III of W/25 advanced the notion that a declared intent of development justified a measure. This begged the question of what was the effect of certain measures on the trading system and were they the most effective methods, or were there more GATT-consistent methods available that could still achieve the objectives. Many TRIMs, such as local content and export performance requirements, were incompatible with a multilateral trading system based on market systems and comparative advantage. A second question was whether TRIMs had higher costs than alternative measures. It seemed clear that a local content requirement forced firms to purchase higher cost inputs than otherwise; producers of those inputs then had a protected market, and the cost of developing a protected industry or producers was very high in terms of development. A further question arising from Section III was what was the best way to promote foreign direct investment and development; by using TRIMs, or were there other, better methods? The view of his delegation was that there were. The concept of restriction, regulation and requirement by government mandate seemed contrary to the general direction of current policies; many objectives could be better achieved through opening markets to competition instead of regulation. With regard to balance of payments problems, evidence had shown that these were better addressed through macroeconomic policies than through TRIMs. Some other TRIMs seemed to be self-defeating in the context of their stated objectives. Technology transfer and local equity requirements, for example, along with a lack of assurance that technology would be protected, discouraged the transfer of technology to developing countries; by removing these TRIMs, direct foreign investment flows and technology transfer could be increased.

25. The representative of Australia welcomed the submission of W/25 which usefully clarified specific concerns of a large number of developing countries. He welcomed the call in paragraph 11 for all participants to work towards a successful outcome to the negotiations. His delegation agreed that the focus should lie on the adverse trade effects of investment measures, and considered this to be operationally the most important conclusion reached in the paper. The comment contained in paragraph 10 was measured and responsible, and his delegation could endorse it. He recalled a comment by the representative of Hong Kong at the Group's last meeting that the use of TRIMs seemed to be of lesser importance now than in the past, and said his delegation shared that view. While his delegation appreciated the elaboration of development considerations contained in paragraphs 5 to 7 of W/25, it felt it must be recognized that investment measures could discourage trade and lead to serious efficiency losses when they were used to prop up inefficient industries indefinitely. However, his delegation felt that TRIMs could be used in a more positive sense, in developed and developing countries, to facilitate industrial restructuring and deregulation. The final outcome then might well be a reduction in net protection of particular industries.

26. His delegation agreed that none of the TRIMs listed in W/25 were inherently trade distorting. However, it believed that all TRIMs had at

least the potential to cause a negative trade impact; accordingly, disciplines of some appropriate form should apply to all TRIMs. His delegation recognized the concerns of developing countries with regard to the trade restrictive and distorting effects of corporate practices and behaviour, but it had difficulty with the argument that TRIMs were the appropriate means to counteract such practices. In most cases, national competition laws were more appropriate, and those laws should remain a matter for national sovereignty, both for conceptual and practical reasons. With respect to paragraphs 9(v) and (vi), he expressed interest in knowing how the sponsors of W/25 felt that GATT Articles could be expanded to deal sufficiently with the potential trade effects of all TRIMs.

27. His delegation understood the frustration of developing countries over the lack of treatment of development issues in this Group. The Group had made very little progress in the treatment of development issues compared to the Groups dealing with the other two new areas, and especially Services where particularly in recent times there had been considerable convergence of views on development matters. His delegation certainly supported the negotiations taking into account in particular the concerns of the least-developed countries, although it was not easy to see in a practical sense how to achieve that.

28. The representative of the Nordic countries welcomed the submission of W/25. Its constructive approach and the contribution it made in setting out the concerns of so many countries helped to foster the dialogue necessary to move forward. The introductory and concluding sections of W/25 reflected a positive spirit. The paper also showed areas of common ground which could be built on; for example, it recognized that TRIMs could have adverse trade effects at times, and that the existing GATT framework covered this to a certain extent. His delegation fully shared the comment contained in paragraph 11(iii). However, there were elements his delegation did not completely agree with. This was, perhaps, a matter of emphasis. All contracting parties had made a commitment to the concept of undistorted trade as being most conducive to the progressive development of their economies and to raising standards of living, and to some extent his delegation thought that this perspective was underemphasized in W/25. Paragraph 6 listed legitimate objectives for governments to pursue, and his delegation shared particularly the concerns of developing countries to improve their situation; however, signatories to the GATT could not endorse the achievement of those goals by any means. If certain policy instruments led to trade distortions, then those negative effects should be avoided. The fact that a legitimate objective was being pursued did not close the issue; there might be other, less trade-restrictive and distorting ways of doing it. A good example was the discussion of local content requirements in paragraph 8; it was true that these might promote domestic industrialization, but they also implied that potential imports would be shut out from the domestic market. Such imports were the legitimate interest of third countries, which might also be developing countries. Local content requirements seemed also to imply that the domestic source favoured was not necessarily the least-cost solution from the producer's point of view; it could not be said that such a situation was automatically conducive to development in the long-run.

29. His delegation agreed there could not be any a priori assumption that any measure was inherently trade restrictive and distorting. However, it did not feel that it was constructive or appropriate to demand exhaustive proof that a measure was harmful under every possible circumstance. As in all rule-making, the Group had to work with generalizations. As could be seen from the Nordic countries' submission (NG12/W/23), his delegation felt the case for prohibition was strong enough to make in the case of local content and export performance requirements. He noted the references in paragraph 8 to certain forms of corporate behaviour; while his delegation did not doubt that developing countries encountered them and that in specific instances they represented a problem, it questioned the wisdom of curbing one trade distortion by introducing another.

30. The Group was engaged in elaborating disciplines to be applied to all contracting parties. This was important to keep in mind when considering how to integrate developing countries' concerns into the work. Rules which were elaborated as if they were to be applied only to developing countries would seriously weaken the prospect for a discipline which was of interest to all contracting parties. While his delegation felt it imperative to take developing country concerns into account, it hoped that it would be possible to reach an understanding on how to do this that would not have the effect of weakening the overall discipline.

31. The representative of the European Communities welcomed the submission of W/25, and said that his delegation shared the view that a satisfactory conclusion to the negotiations had to take appropriate account of development concerns without calling into question the operational and effective character of an agreement. His delegation could go along with some of the points contained in W/25. Its conclusions included some very constructive elements. His delegation could agree that the outcome of the negotiations should facilitate the movement of investment across international frontiers, and it had the impression that some of the proposals on the table followed exactly that objective. It could also agree that the objective should be to remove distortions and impediments to international trade; the approach which had become prominent recently in the Group which differentiated between different types of investment measures according to the intensity of their trade effects was aimed squarely at the removal of trade distortions and impediments. The call in W/25 to take account of the trade effects of investment measures and not the measures themselves was the approach that his delegation had been following. The statement in W/25 that the approach should be proportionate to the magnitude of the problem was also compatible with the modulated approach that his delegation was suggesting should be taken; there should be strict disciplines over some investment measures and less strict disciplines over others which had lesser or only occasional adverse trade effects.

32. His delegation did not fully agree with what was said in W/25, and it considered that some elements gave rise to serious concern. He had the impression that notwithstanding all the positive language used at the end

of W/25, there might be some hidden conclusion that basically the Group did not have to do anything. He drew this conclusion from a number of elements. He believed that the sponsors of W/25 considered that the development aspects listed in the form of objectives pursued by developing countries were a justification for the means by which the objectives were achieved. Many of those objectives were shared by developed countries, and their pursuit could certainly not be a justification for adopting any means to achieve them, including means which were trade distorting; that would have implications for general trade policy considerations because it could then be argued that many restrictive trade policy measures would also be justified. A second element pointing to this hidden conclusion was that it was acknowledged in W/25 that some investment measures might have significant and direct adverse trade effects, but the last sentence of paragraph 8 said that even where that was the case those trade effects might be justified on the basis of development considerations. That was an idea to be found in earlier submissions by some participants and it amounted to saying that with regard to developing countries no disciplines should be established. A third element was language in paragraph 9 that everything could be dealt within the existing context of GATT and nothing additional had to be done. His own delegation had endeavoured to base its negotiating approach squarely on GATT disciplines, and it held the view that a lot of the problems caused by TRIMs were already dealt with by existing GATT provisions; as could be seen from his delegation's submission, additional substantive disciplines would need to be relatively limited. However, the approach adopted in his delegation's submission was not shared by all developing countries, and he feared that the language used in paragraph 9 of W/25 went very much in the opposite direction. In conclusion, his delegation had mixed feelings about W/25; it gave some encouraging signs, but he felt that in fact it might be attempting to close the door on the negotiations quite a bit. He therefore encouraged all participants to contribute constructively and operationally to the negotiations and not to consider that everything was fine as it currently stood.

33. The representative of New Zealand welcomed the submission of W/25, and said that her delegation recognized the need for the Group to deal with development concerns but in a manner consistent with basic GATT principles and objectives. It had concerns that the conclusions which could be drawn from W/25 suggested that a solution for dealing with development considerations in the context of TRIMs might not be fully consistent with GATT principles and objectives. Her delegation could agree with several points in W/25, among them the conclusions, although she did not feel that these went far enough in some respects. Regarding the references to broader social and economic policies, she said that a number of border import restrictions were used by governments with similar intentions and objectives, but this had not prevented the GATT from recognizing that there were certain ways these restricted or distorted trade which were inherently to be condemned. The same should hold true for TRIMs. Her delegation considered that work in the Group over the past three years had identified certain investment measures with very similar adverse trade effects to border trade restrictions, and it wished now to move towards finding ways to avoid them as required by the mandate.

34. Regarding the methodological prerequisites contained in paragraph 3, she had observed that there seemed to be something of a gap between the first and the second. While her delegation would agree that there should be no a priori presumption that investment measures were inherently trade restricting and distorting, it certainly did not start by rejecting that possibility. It considered certain TRIMs had similar effects to trade measures and could be inherently trade restrictive and distorting, and it did not therefore think it logical to move immediately to the conclusion that only in certain circumstances and only on a case-by-case basis could the Group look at the question of adverse trade effects. Regarding paragraph 4, while dumping and subsidization might be only partially prohibited under the GATT, there were much stronger disciplines, including prohibition, established for example in Articles III and XI of the GATT.

35. Regarding Section III of W/25, her delegation had no quarrel with the objectives that were set out, and it agreed that development considerations had to be recognized, as they already were in the GATT; but there could be no blank cheque issued to cover any policy measures simply on the grounds that they were used for development purposes. The GATT provided flexibility, but it ensured that one set of rules was applicable to all signatories. Her delegation considered that the use of trade restrictions and the protection of domestic industry regardless of any question of economic efficiency could impede development, and that the basic premise of GATT recognized that. Her delegation agreed with the statement in paragraph 5 that economic development was consistent with the objectives of the GATT, but it would submit that the reverse was also true, and that the objectives of the GATT were consistent with economic development. All GATT signatories believed that its framework of rules and disciplines were for their own economic well-being, and that it provided a platform for the gradual reduction of trade restrictions. She agreed with the comments of the representative of Australia with regard to structural adjustment, but noted that they implied some change towards greater economic efficiency; the conclusion to draw was therefore that some end-date to the use of policy measures for this purpose should be established.

36. Regarding paragraph 6 of W/25, she stated that these objectives were common to developed and developing countries alike; the GATT ensured that those objectives were fulfilled in a non-discriminatory way and in the least trade restrictive and distorting way which took account of the interests of all trading partners. Her delegation agreed with the points made in paragraph 9, particularly sections (v) and (vi), but it would go further. Nevertheless, her delegation's basic approach was to find solutions to the problems caused by TRIMs through existing GATT disciplines, and it wished first and foremost to bring GATT rules which already covered investment measures implicitly to bear explicitly; to that extent, her delegation would agree with the comments made concerning the existing framework of GATT rights and obligations.

37. The representative of Hungary welcomed the submission of W/25. Its coverage was comprehensive and it addressed practically all aspects of the negotiations. It clearly recognized the concerns of developing countries,

but its general approach had wide applications for the identification of trade restrictive and distorting effects of investment measures according to the mandate, and also for trying to find means to avoid such effects. His delegation agreed to a large extent with the importance attached in paragraphs 5 and 6 to investment policies for promoting social and economic growth and development, although he questioned whether all of those objectives could be achieved by the use of investment measures alone. His delegation agreed with the conclusions set out in W/25 and with the reference to facilitating international flows of investment, although the negotiations also had implications for domestic investment measures and policies. The Group had held extensive discussions on what could be considered to be adverse trade effects, but clearly very different views still existed among participants on this issue. His delegation believed further work was needed in order to come to a better understanding on what could be considered adverse trade effects for the purposes of this Group. That could help in the classification of the various TRIMs cited and in finding ways to deal with TRIMs falling under each category.

38. His delegation considered that there were a number of measures among those cited (such as local equity requirements) for which it was very difficult to see any adverse trade effect. Some others were not really investment measures as such and were not relevant to the Group's work; that was the case of exchange restrictions, for example, for which strong disciplines already existed under Article XV of the GATT and for which dispute settlement procedures were therefore already available. There was a second group of measures which might, under certain conditions, have adverse trade effects but that had to be established case-by-case. The large majority of measures cited would fall under this category. Finally, it might be found that a small number of TRIMs caused in most cases adverse trade effects and for them a rule-based approach might be relevant, although his delegation was not yet convinced that there were in fact any measures corresponding to that description. Paragraph 4 of W/25 touched on the question of what was the proper treatment for incentives combined with investment measures. Discussions in the Group had shown this to be a tricky issue when addressed separately. His delegation had serious concerns over a number of submissions which had proposed stricter disciplines for investment incentives than for subsidies having practically the same effect, and the Group needed to bear in mind the work underway in the Subsidies Group when addressing this issue.

39. The representative of Hong Kong welcomed the submission of W/25 which restored some balance to the negotiations since it addressed many important development considerations that until now had not received adequate attention. His delegation agreed with the basic objective of promoting investment flows and development. It agreed also with what seemed to be a growing consensus that certain TRIMs could be harmful to or distort trade. It agreed with the statement in Section II that there should be no a priori presumption that any particular investment measure was inherently trade restrictive or distorting, but it felt by the same token that it could not be presumed that no TRIMs were inherently trade restrictive or distorting. Although the issue had not yet been resolved, it might well be demonstrated that certain TRIMs were inherently trade restrictive and distorting; in

his view the key to progress in the negotiations lay in finding an operational definition of the term inherently trade distorting. His delegation felt, therefore, that W/25 did prejudge a question at the heart of the negotiations which had not yet been resolved.

40. His delegation recognized that some developing countries experienced difficulties with the practices of multinational corporations, but it questioned whether using investment measures to remove those supposed distortive practices was necessarily the best approach. It questioned, therefore, the validity of the assumption which seemed to run through W/25 that one of the principal needs for TRIMs was to counter the behaviour of multinational corporations. His delegation believed as a matter of common sense that TRIMs were a net disincentive to inward investment, and it questioned therefore whether the application of certain TRIMs was always the most effective means to reach the stated objective of W/25.

41. The representative of Canada welcomed the submission of W/25 and said that the full engagement of the countries sponsoring the paper was welcome especially as regards their willingness to work towards a successful conclusion to the negotiations, the objective of which was to promote international investment flows. Importantly, the proposal recognized the existence and utilization of measures under discussion in the Group; with the recent tabling also of a legal text in NG12/W/24 the Group was now in a position to find potential areas of common ground. A major problem for his delegation was that the thrust of W/25 seemed to suggest that existing GATT Articles adequately addressed the adverse trade effects of TRIMs; it was clear from the Group's discussions that that was not the case, and his delegation certainly did not reach the same conclusion. The methodology put forward in Section II of W/25 was a useful exposition of conventional GATT methods relating to the settlement of disputes involving nullification and impairment of GATT rights; those methods had been well-tested, and they offered one means of disciplining TRIMs. The question was whether this was sufficient to avoid the trade restrictive and distorting effects of TRIMs.

42. His delegation considered the objectives set out in Section III of W/25 were common to the economic policies of all governments, and that it was important to note that trade policy and investment policy were simply subsets of economic policies being pursued by governments. No-one questioned the sovereign right of governments to pursue and achieve those objectives. However, it should be kept in mind that GATT signatories had undertaken to pursue their legitimate and individual economic development objectives in a manner that did not impinge negatively on the trade interests of other contracting parties. Recent history was replete with lessons that economic development conducted in a manner which distorted market signals and resource allocation ultimately undercut the long term development of an economy. This became particularly apparent at the time of integration into the international trading economy, which starkly exposed inadequacies in international competitiveness. Therefore, any economic measure ought to promote competitiveness if development was to be viable over the longer term.

43. Paragraph 8 of W/25 repeated earlier suggestions that the beneficial economic effects of TRIMs appeared to surmount all other possible disadvantages that might flow from them. He asked how such benefits were defined, and said that they would presumably need to be judged on the basis of enhanced global economic welfare. However, the thrust of this Section of W/25 seemed to be founded on the assertion that development considerations outweighed the trade effects of TRIMs, as though those two considerations were diametrically opposed. He did not believe that they were. TRIMs were questionable tools for development on the grounds that they might be costly to maintain, particularly insofar as they introduce non-market distortions which might not be welfare-enhancing for the host country and might lead to a path of development that could only be maintained if the distortion was maintained. He felt it was instructive to note that certain developing countries had switched their economic development priorities from import substitution to export-led development, and this seemed to contradict in part the suggestion made in W/25 concerning the importance of local content and of using TRIMs to achieve it. In general, his delegation considered the use of non-market distortions to attract or to lever investment to be a questionable exercise. In the short run such departures from the underlying fundamentals of an economy could be purchased, but at a cost. Over the longer term, investment was responsive to a country's factor endowments and in this context continued reliance on TRIMs as a policy apparatus to promote economic development appeared to be inefficient and unsustainable. With regard to restrictive business practices, his delegation felt that irrespective of the actual effectiveness of TRIMs in controlling the practices of companies, it had to be recognized that TRIMs compounded any initial distortion with potential trade distortions. A better policy approach in the view and experience of his delegation was the use of competition policy and company law to redress anti-competitive behaviour.

43. The Group held an informal exchange of views on the two issues which the Chairman had suggested that participants should focus on at this meeting, namely, how development aspects should be integrated into the negotiations and how adequately GATT Articles ensured that the adverse trade effects of TRIMs were avoided.

II Item B of the Agenda

44. The Chairman recalled that the Group was scheduled to meet again on 17-18 May, 13 and 15 June, and 12-13 July 1990. The Group agreed that at its next meeting it would focus in an informal session on the following two issues: what new disciplines are needed to avoid the adverse trade effects of investment measures; and what should be the scope and coverage of further provisions?